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CLERK

BY: Kelly Gresham

IN THE SUPERIOR COURT

STATE OF ARIZONA, COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

JAMES ARTHUR RAY,

Defendant.

V1300CR201080049

AMENDED
STATE'S REQUESTED
FINAL JURY INSTRUCTIONS

(The Honorable Warren Darrow)

The State of Arizona, through counsel undersigned, amends the proposed final jury instruction pertaining to duty that it submitted on 10 June 2011. The State respectfully requests the following jury instruction on the issue of duty be provided to the jury.

Duty

Before the Defendant can be found guilty of either negligent homicide or manslaughter based on an omission by the Defendant, you must determine whether the omission violated a legal duty owed by the Defendant to the victim of the negligent homicide or manslaughter.

Such a duty exists if any of the following conditions have occurred:

(1) If the victim was helpless and in a situation of peril as a result of the defendant's action or as a result of defendant's use of an instrumentality under the control of the defendant, the Defendant has a duty to render reasonable aid and assistance to the victim.

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(2) If the victim was in a special relationship with the Defendant. A special relationship can be based on a contract or other relationship that results in benefit to the defendant. If you find that special relationship to exist, the Defendant has a duty to avoid creating a situation which poses an unreasonable risk of harm to the victim.

Source for (1): *322 of the Restatement (Second) of Torts, Maldonado v. Southern Pacific Transportation Company*, 129 Ariz. 165, 168, 629 P.2d 1001, 1004 (App. 1981); *La Raia v. Superior Court in and for Maricopa County*, 150 Ariz. 118, 121-122, 722 P.2d 286, 289-290 (1986); *Tubbs v. Argus*, 140 Ind.App. 695, 225 N.E.2d 841, 843 (1967); *State v. Brown*, 129 Ariz. 347, 349, 631 P.2d 129, 131 (App. 1981).

Source for (2): *Restatement (Third) of Torts: Physical Harm* § 41(o) (2004); *Gibson v. Kasey*, 214 Ariz. 141, 143, 150 P.3d 228, 231 (2007); *Ontiveros v. Borak*, 136 Ariz. 500, 504, 667 P.2d 200, 204 (1983); *Stanley v. McCarver*, 208 Ariz. 219, 221 ¶ 7, 92 P.3d 849, 851 (2004).

Respectfully submitted this 13th day of June, 2011.

By

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Copies of the foregoing delivered this
13th day of June, 2011, to

Hon. Warren Darrow
Yavapai County Superior Court, Div. PTB
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By: Kathy Darrow